



Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2013–N085; FXES11120100000–134–FF01E00000]

**Proposed Amendment of Habitat Conservation Plan and Associated Documents;
Green Diamond Resource Company; Mason, Grays Harbor, Lewis, Pacific, and
Thurston Counties, WA**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application, under the Endangered Species Act of 1973 (Act), as amended, from Green Diamond Resource Company (GDRCo) for a proposed low-effect amendment to their Habitat Conservation Plan (HCP) and Implementation Agreement (IA). If approved, the GDRCo incidental take permit (ITP), as well as the HCP and IA, would be amended to increase the amount of lands covered under the ITP and HCP; some of the HCP management prescriptions would change, including those associated with marbled murrelet

(*Brachyramphus marmoratus*) habitat protection; and the IA would be amended to include a new clause and a new marbled murrelet habitat map. The amendment would change the management of GDRCo's added lands from prescriptions currently required under the standard Washington State Forest Practices Rules (FP Rules) and Forest Practices HCP (FP HCP) to those of the GDRCo HCP. We invite public comment on the proposed amendment of the ITP, HCP, IA, and associated documents.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may download a copy of the permit application, HCP, and associated documents on the Internet at <http://www.fws.gov/wafwo/>. The proposed amendment to the HCP and IA and the Draft Environmental Action Statement are available for review and comment. The original HCP, IA, and Final Environmental Impact Statement are available for review.

Please specify permit number TE032463-0 on all correspondence. You may submit comments or requests for hard copies or a CD-ROM of the documents by one of the following methods:

- *Email:* Louellyn_Jones@fws.gov. Include "Permit Number TE032463-0" in the subject line of the message.
- *Facsimile:* Ken Berg, Manager, 360-753-9405; Attn.: Lou Ellyn Jones, Permit number TE032463-0.

- *U.S. Mail:* Please address written comments to Ken Berg, Manager;
Attention: Lou Ellyn Jones; Washington Fish and Wildlife Office, U.S. Fish
and Wildlife Service; 510 Desmond Drive SE, Lacey, WA 98503.
- *In-Person:* Written comments can be dropped off during regular business
hours (8 a.m.–4:30 p.m.) at the above address. Call Lou Ellyn Jones, Fish
and Wildlife Biologist, at (360) 753-5822 to make an appointment to view
or pick up draft documents.

FOR FURTHER INFORMATION CONTACT: Lou Ellyn Jones, Fish and Wildlife
Biologist, at address under **ADDRESSES**, above; by email at Louellyn_Jones@fws.gov;
or by telephone at (360) 753-5822.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 et seq.) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the “take” of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). However, under section 10 of the Act, for limited circumstances, we issue permits to authorize incidental take of threatened or endangered species—i.e., take that is incidental to, and not the purpose of, the carrying out of otherwise lawful activities. A permit to take bald eagles can also be issued under the Act when associated with a conservation

plan such as an HCP, as long as the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) standards are met.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. Regulations governing take of bald eagles are at 50 CFR 22. In addition to meeting other criteria, an incidental take permit must not jeopardize the continued existence of federally listed threatened or endangered species, and authorized take of bald eagles must be consistent with the goal of maintaining stable or increasing breeding populations of this species.

Introduction

The GDRCo has requested an amendment to the HCP, IA, and ITP originally issued on October 13, 2000, with a term of 50 years. The species covered under the existing and amended ITP would remain the same; however, for some species, listing status has changed since the permit was issued. Covered species under the amended HCP include the bull trout (*Salvelinus confluentus*), which was listed as threatened on June 10, 1998 (63 FR 31693); the marbled murrelet (*Brachyramphus marmoratus*), which was listed as threatened on October 1, 1992 (57 FR 45328); and the bald eagle (*Haliaeetus leucocephalus*), which was listed as threatened in Washington on February 14, 1978 (43 FR 6230), and delisted throughout the United States on July 9, 2007 (72 FR 37346). Also covered are 5 anadromous fish species under the jurisdiction of the National Marine Fisheries Service, 2 of which are listed, and 43 additional non-listed species associated with western forests, streams, and wetlands.

The northern spotted owl (*Strix occidentalis caurina*), which was listed as threatened on June 26, 1990 (55 FR 26114), is not covered in the existing or proposed amendment to the HCP. Management of northern spotted owls and their habitat on GDRCo lands would continue to be guided by applicable FP Rules, as well as by the take prohibitions under the Act.

Applicant's Proposal

The proposed amendment would add to the permit approximately 53,000 acres and 854 stream miles of covered lands, for a total of approximately 319,000 acres and 2,575 stream miles on GDRCo lands, to be managed in accordance with their HCP. Any additional lands that may be acquired by GDRCo within the Chehalis and Willapa Basins during the term of the permit may also be added to the HCP, according to the process outlined in the amended IA. The area of the Chehalis (about 1.7 million acres) and Willapa (166,000 acres) Basins totals about 2,920 mi² (about 1.87 million acres), which includes part of the original HCP boundary and the proposed expansion area. The new HCP boundary would include lands in Mason, Grays Harbor, Lewis, Pacific, and Thurston Counties in the State of Washington. The amendment would change the management of GDRCo's added lands from prescriptions currently required under FP Rules and the FP HCP to those of the GDRCo HCP. The amendment also changes some of the original GDRCo HCP prescriptions.

Under the amendment, suitable marbled murrelet habitat on the added lands and any future additions to the HCP would be determined based on the most recent (2011) Pacific Seabird Group criteria, which are more stringent than those of both FP Rules

(WAC 222-16-010) and the original GDRCo HCP. For example, under the new criteria, only one nesting platform, at least 10 cm (4 inches) wide, is required per acre to meet the definition of suitable marbled murrelet habitat. In contrast, under FP Rules, two nesting platforms, at least 18 cm (7 inches) wide, are required per acre.

Most of the lands covered under the amended HCP are within the marbled murrelet special landscape (WAC 222-16-087). FP Rules protect stands of occupied murrelet habitat and unsurveyed suitable habitat patches that are 5 acres or larger within the marbled murrelet special landscape and marbled murrelet detection areas. Elsewhere, occupied and unsurveyed suitable habitat patches 7 acres or larger are protected. Under the amended GDRCo HCP, suitable stands on the added lands that are 5 acres or larger would be protected, regardless of whether or not they are occupied or within the marbled murrelet special landscape or a detection area. The original HCP Area will continue to focus on protection of occupied murrelet habitat, per the original HCP prescriptions.

The proposed amendment includes an update to HCP prescriptions based on the most recent Pacific Region guidelines to avoid disturbance and take at communal bald eagle roosts and important foraging areas. It also addresses protection of newly discovered bald eagle nests, roosts, and important foraging areas, and a yearly monitoring and reporting requirement. The Service may review yearly reports to evaluate whether prescriptions need to be updated to remain compliant with the Bald and Golden Eagle Protection Act.

The proposed amendment would change the forest cover prescriptions for rain-on-snow zones within the Chehalis Watershed to reflect a watershed analysis conducted for that watershed and consistent with FP Rules (WAC 222-20-100). Conservation measures

that are part of the original HCP will continue to be applied in the added lands and lands acquired in the future. These include the implementation of the Riparian Conservation Reserve (RCR), wetland, and steep slope management programs. Established RCRs will be thinned to promote late seral stand characteristics, and they may develop into marbled murrelet and spotted owl habitat over time. No additional buffer areas will be established for murrelet habitat that lies within the RCRs, given the large extent of contiguous forest (17 percent of the plan area) within these areas.

Text and exhibits in the IA would be amended to reflect the expanded HCP boundary around lands eligible for inclusion under the HCP, a new marbled murrelet habitat map, and the addition of a severability and savings clause.

Anticipated Effects of Implementing the Amended HCP

Bull trout are only occasionally found within the covered area for the amended HCP. The FP HCP and the GDRCo HCP contain similar conservation measures for the bull trout and other aquatic species. Given the low occurrence of bull trout within the covered area for the amended HCP and the similarity of the two sets of HCP conservation measures, the anticipated effects to the bull trout of changing from the FP HCP prescriptions to the GDRCo HCP prescriptions are negligible. All private timberlands in Washington State, including those under GDRCo ownership, are excluded from the area designated as bull trout critical habitat (75 FR 63898); therefore, the amendment would have no effect on designated bull trout critical habitat.

Both beneficial and adverse impacts to marbled murrelet are anticipated. Under the amended HCP, it is anticipated that more acres of suitable marbled murrelet habitat

would be protected than under standard FP Rules, due to the use of the more current and stringent suitable habitat criteria and due to protection of suitable habitat patches that are 5 acres or larger on the added lands regardless of their occupancy status or location relative to the marbled murrelet special emphasis area.

Adverse effects to the marbled murrelet likely to be caused by the amended HCP are associated with removal of suitable habitat patches that are less than 5 acres. Very few suitable habitat patches less than 5 acres are anticipated because most of them would have already been removed under FP Rules unless they are within regulatory buffers or difficult-to-harvest locations. Thus, the area where these adverse effects could occur is very small. In addition, suitable murrelet habitat within GDRCo RCRs, wetland or steep slope buffers, or on adjacent ownerships could be degraded by windthrow or exposure to wind if harvest occurs within 300 feet of murrelet habitat. The probability of this is low, because suitable habitat is not likely to develop in the RCRs and other buffers for another 35–40 years. The same potential for adverse effects to the murrelet also exists under the original GDRCo HCP and FP rules. Although the Service considers this habitat degradation likely to occur, the area where this could occur is limited; moreover, due to the current declining population status of marbled murrelet, the Service is not reasonably certain that murrelet would occupy these small or marginal habitat areas. Therefore, we do not believe that take of marbled murrelet is likely to increase under the amended HCP. Despite the small possibility of adverse effects, the overall result of the modified marbled murrelet prescriptions is beneficial, because the modifications protect habitat that would not otherwise be protected under the FP Rules.

Marbled murrelet critical habitat has not been designated on private lands in

Washington State. A portion of designated critical habitat exists in the extreme eastern corner and on State-owned lands within the covered area under the amended HCP. It is unlikely GDRCo would purchase land in the immediate area of marbled murrelet critical habitat, because access to many of these areas is difficult or they are within the Mineral Spotted Owl Special Emphasis Area, which has encumbrances on private lands. Therefore, the potential for affecting marbled murrelet critical habitat is very low.

There are no anticipated effects to spotted owls in association with the amendment, because they are not a covered species under the original or amended GDRCo HCP, and management of their habitat would continue to comply with the requirements of FP Rules and the Federal ESA. Spotted owl critical habitat has been designated (77 FR 71875) in a small portion of the amended assessment area, but is not adjacent to any GDRCo lands. It is unlikely that GDRCo would purchase land adjacent to spotted owl critical habitat in the future. Thus, the effect of the amendment will be negligible on northern spotted owls and their designated critical habitat.

Over the decades-long term of the amended HCP, it is estimated that there may be two occurrences of disturbance to a nesting pair of bald eagles. This low level of impact is expected to be consistent with maintaining stable or increasing numbers of bald eagles in the area covered by the amended HCP. Monitoring reports and Service reviews will ensure that implementation of the HCP will remain consistent with the requirements of the Bald and Golden Eagle Protection Act.

There are 43 other non-listed covered species. Effects caused by the amended HCP are anticipated to be negligible for those non-listed covered species associated with mainstem streams and rivers as well as tributaries, because riparian buffer requirements

are very similar under the amended GDRCo HCP compared to those of the FP Rules and FP HCP. Effects are anticipated to be beneficial for species associated with forested wetlands and headwater areas, because the GDRCo HCP prescriptions protect forested wetlands and riparian buffers on headwater streams, while the FP Rules do not. Effects are also anticipated to be beneficial for snag-dependent species, due to the higher number of conserved wildlife trees required under the GDRCo HCP.

Our Preliminary Determination

The proposed amendment of the ITP is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) (NEPA). The Service has made a preliminary determination that the permit application, the proposed amendment of the HCP, and the pending issuance of an amended ITP are eligible for categorical exclusion under NEPA as provided by the Department of the Interior Manual (516 DM 2 Appendix 2 and 516 DM 8), based on the following criteria: (1) Implementation of the amended HCP would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the amended HCP would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the amended HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly-situated projects, would not result, over time, in cumulative adverse effects to environmental values or resources which would be considered significant. We explain the basis for this preliminary determination above under **Anticipated Effects of Implementing the Amended HCP**, and in more detail in a

draft Environmental Action Statement that is also available for public review. Based upon our review of public comments that we receive in response to this notice, this preliminary determination may be revised.

Next Steps

The public process for the proposed Federal permit action will be completed after the public comment period, at which time we will evaluate the permit amendment application and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act, applicable regulations, and NEPA requirements. If we determine that those requirements are met, we will amend the ITP to reflect the revised HCP and IA.

Public Comments

We invite public comment on the proposed amendments of the ITP, HCP, and IA. If you wish to comment on the proposed amendment of the ITP, HCP, and associated documents, you may submit comments by any one of the methods discussed above under **ADDRESSES**.

Public Availability of Comments

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS under NEPA, will become part of the public record and will be available for public inspection by appointment, during regular business hours, at the Service's Washington Fish and Wildlife Office (see ADDRESSES). Before including

your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is provided in accordance with section 10 of the Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: April 5, 2013

**Richard R. Hannan,
Deputy Regional Director,
Pacific Region, U.S. Fish and Wildlife Service,
Portland, Oregon**

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